

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

RODNEY K. MEISEL,

Plaintiff,

V.

USA SHADE AND FABRIC
STRUCTURES INC., U.S. BANK,
N.A., JEFF SAREMBOCK, and
ADAM AUTEN,

Defendants.

CIVIL ACTION NO. _____

DEFENDANT U.S. BANK, N.A.'S NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1331, 1441, and 1446, Defendant U.S. Bank, N.A. (“USB”) files this its Notice of Removal, and would show the Court as follows:

1. Plaintiff Rodney K. Meisel (“Meisel”) commenced this action, Cause Number DC-10-08272-K (the “State Court Action”) on July 6, 2010 in the 192nd Judicial District of Dallas County, Texas, by filing Meisel’s Original Petition and Application for Temporary Restraining Order and Preliminary Injunction (hereinafter “Complaint”).

2. Pursuant to 28 U.S.C. § 1446(a) and Local Rule 81.1(3), USB attaches as exhibits to this Notice of Removal: (1) an index of all documents that clearly identifies each document and indicates the date the document was filed in state court; (2) a copy of the docket sheet in the state court action; (3) each document filed in the state court action, except discovery material; and (3) a separately signed certificate of interested persons in compliance with Local Rule 3.1(c) or 3.2(e).

FEDERAL QUESTION JURISDICTION

3. Except as otherwise expressly provided by Act of Congress, any civil action brought in a state court of which the district courts of the United States have original jurisdiction may be removed to the district court of the United States for the district and division embracing the place where the action is filed. 28 U.S.C. § 1441(a). The Dallas Division of the Northern District of Texas is the United States district and division embracing Dallas County, Texas, the county in which the State Court Action was filed, and is pending. 28 U.S.C. § 124(a)(1).

4. This Court has subject matter jurisdiction over this action for two reasons. First, this action arises under federal law pursuant to 28 U.S.C. § 1331. Second, this Notice of Removal is timely pursuant to 28 U.S.C. § 1446 because thirty days have not elapsed from Meisel's discovery responses which have revealed a federal question.

5. This action arises under federal law because Meisel's Texas common law defamation claim is completely preempted by the Fair Credit Reporting Act, 15 U.S.C. §§ 1681–1681x (“FCRA”). The FCRA regulates consumer credit reports and their dissemination by financial institutions and consumer reporting agencies. The FCRA provides consumers with a private cause of action to enforce their rights created under the statute. *See* 15 U.S.C. § 1681p. Congress also provided a specific jurisdictional grant to the federal courts for the enforcement of those rights. *See id.* The federal cause of action is exclusive here because the FCRA specifically preempts state defamation actions against persons who furnish information to consumer reporting agencies, unless false information was reported with malice or willful intent to injure the consumer. 15 U.S.C. § 1681h(e). Here, USB is a person who furnishes information to a credit reporting agency. Meisel brings a defamation action against USB for allegedly republishing “false and defamatory statements” to ChexSystems, Inc., a consumer reporting

agency. *See* Pl.'s Compl. ¶ 4.09. USB did not report that information to ChexSystems, Inc. with malice or a willful intent to injure Meisel. Thus, as Meisel's defamation action is completely preempted by the FCRA, it arises under federal law.

6. USB's Notice of Removal is timely because Meisel's discovery responses, which were received by USB on December 23, 2010, recently revealed that despite Meisel's artful pleading in his Complaint, Meisel is not seeking damages from traditional allegations of defamation for repeating a defamatory statement to a third party. Instead, the new discovery shows that Meisel is solely seeking to hold USB responsible for allegedly reporting irregular activity by Meisel to a consumer reporting agency under the FCRA. 28 U.S.C. § 1446(b) provides that "[i]f the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant . . . of an . . . other paper from which it may first be ascertained that the case is one which is or has become removable" Here, USB first ascertained that it became removable after December 23, 2010, when USB received Meisel's responses to its discovery requests. As thirty days have not yet elapsed, this Notice of Removal is timely.

7. In conclusion, despite Meisel's artful pleading, Meisel's discovery responses have revealed the true nature of this action: a defamation action against USB that is completely preempted under the FCRA. As this action arises under federal law, this Court has subject matter jurisdiction to decide it.

8. WHEREFORE, USB removes this action from the 192nd Judicial District of Dallas County, Texas to the United States District Court for the Northern District of Texas, Dallas Division, so that this Court may assume jurisdiction over the cause as provided by law, and seek any other relief to which it may be justly entitled.

Dated: January 12, 2011

Respectfully submitted,

s/ Jennifer L. Keefe

Jennifer L. Keefe

Texas Bar No. 90001247

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ATTORNEY FOR DEFENDANT
U.S. BANK, N.A.

CONSENT TO REMOVAL:

s/ S. Wesley Butler

S. Wesley Butler

Craig McDougal

Crouch & Ramey, L.L.P.

ATTORNEY FOR DEFENDANTS

USA SHADE AND FABRIC

STRUCTURES, INC., JEFF SAREMBOCK,

and ADAM AUTEN

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of this Notice of Removal has been sent via certified mail, return receipt requested, on this 12th day of January, 2011 to:

Jeffrey Goldfarb
Charles W. Branham, III
Goldfarb Branham L.L.P.
Saint Ann Court
2501 N. Harwood Street, Suite 1801
Dallas, Texas 75201-4629

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Craig McDougal
Crouch & Ramey, L.L.P.
2001 Ross Avenue
Suite 4400
Dallas, Texas 75201

s/ Jennifer L. Keefe
Jennifer L. Keefe